

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SOLOMONA RICKY PATU,

CASE NO. 2:22-cv-00737-LK

Plaintiff,

ORDER ADOPTING REPORT AND RECOMMENDATION

DANIEL WHITE et al.,

Defendants.

This matter comes before the Court on the Report and Recommendation (“R&R”) of the Honorable S. Kate Vaughan, United States Magistrate Judge, Dkt. No. 7, and Plaintiff Solomona Ricky Patu’s objections and supplemental objections to the R&R, Dkt. Nos. 8, 9.

On May 27, 2022, Patu filed an application for leave to proceed in forma pauperis (“IFP”) and a proposed 42 U.S.C. § 1983 complaint. Dkt. Nos. 1, 1-1. On July 12, 2022, Judge Vaughan issued the R&R recommending that the Court deny Patu’s IFP application and direct Patu to pay the filing fee within 30 days of the order adopting the R&R or face dismissal. Dkt. No. 7 at 1. On July 23 and 28, 2022, Patu filed objections. Dkt. Nos. 8, 9.

1 The district judge must determine de novo any part of the magistrate judge's disposition
2 that has been properly objected to. Fed. R. Civ. P. 72(b)(3). The district judge may accept, reject,
3 or modify the recommended disposition; receive further evidence; or return the matter to the
4 magistrate judge with instructions. *Id.*

5 Nothing in Patu's objections demonstrates that Judge Vaughan's recommendation is in
6 error. Pursuant to the Prison Litigation Reform Act, Patu may be barred entirely from IFP status if
7 he has previously brought three or more actions that were dismissed on the grounds that they were
8 frivolous, malicious, or fail to state a claim. 28 U.S.C. § 1915(g). The only exception to this "three-
9 strikes rule" is if the prisoner is "under imminent danger of serious physical injury." *Id.* As Judge
10 Vaughan correctly noted, Patu has filed at least three actions while incarcerated that were
11 dismissed for failure to state a claim. Dkt. No. 7 at 3 (citing *Patu v. Allbert*, No. C14-765-MJP,
12 Dkts. 11, 13; *Patu v. Alexander*, No. C15-5332-RJB, Dkts. 9, 13, 17; *Patu v. Albert*, No. C15-722-
13 RSM, Dkts. 11, 13). In this action, Patu has failed to show that he is "under imminent danger of
14 serious physical injury," alleging only that he has been unable to access regular programs such as
15 law library, education, and the barbershop. *See id.* Patu's objections fail to add anything to his
16 prior allegations: he claims only that he is "under imminent danger of not attending the regular
17 programming that is causing physical and emotional stress," and that lack of regular access to a
18 barber is unsanitary. Dkt. No. 8 at 1-2.

19 The Court accordingly finds and ORDERS as follows:

- 20 1. The Court ADOPTS the Report and Recommendation.
- 21 2. The Clerk is DIRECTED to close this case and to dismiss it without prejudice if
22 Plaintiff fails to pay the filing fee within 30 days of this Order.
- 23 3. The Clerk is DIRECTED to send copies of this Order to Patu and to Judge Vaughan.

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2 Dated this 14th day of October, 2022.
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Lauren King
United States District Judge